



Noli Me Tangere.

THE
Young STUDENT'S
LETTER
TO AN
Old Lawyer, &c.

*For my Kinsman
Mr. Robt.*

Ex dono Authore

The Authenticks to Corroborate the Old Lawyer's Exposition of that Royal Maxim, The King can do no Wrong; Are Borrowed from the Sentiments,

First, Of Heathens,

As Plutarch, Dion Cassius, Marcus Aurelius, Otanes, Æschylus, Caius Memmius, Marcus Antonius, and Cicero.

Secondly, Of Antient Christians,

As Cassiodorus, Arnobius, Cyril, Hyrome, Ambross, Euthemius, and others.

Thirdly, Of our own Divines,

As Mercks, Brownrig, Stillingfleet, Pelling, and Ervats.

Fourthly, Of Civilians,

As Ulpian, Harmenopulus, Ducke, Wiseman, and others,

Fifthly, Of Common Lawyers.

As Braſton, Fleta, Stamford, Bridgeman, Earl of Clarendon, Roger Coke, &c.

NOLI ME TANGERE.

The Young STUDENT's
LETTER
TO THE
Old Lawyer

'In the COUNTRY.

CONTAINING

Several other Authenticks, to Corroborate, and Confirm the
EXPLICATION or EXPOSITION, lately sent by the
Latter, of that Royal Maxim ;

The KING can do no Wrong.

To which is Added, *A Post-Script*, Consisting of some Words of the
ROYAL MARTYR.

Ecclef. viii. 3.

*Where the Word of a King is, there is Power ; and who may
say unto him, what dost Thou ?*

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THE Young Student's LETTER, &c.

Honoured SIR,

THE Genuine Sense and Meaning (which I lately desired from you) of that Prerogative Maxim in our Law, The King can do no Wrong, I have received to my great Satisfaction; And I have since Communicated it to my Chamber-Fellow (a Person of long Standing in our Honourable Society, and very well Read not only in our Common, and Statute Laws, but also in other kind of Learning;) And he, upon the perusal, is so much taken with the Exposition, that your Learned Men have given on it, that he has, out of the Treasury of his Reading, furnish'd me with other Authorities for a Re-inforcement, and Confirmation of that Explication of theirs; A view whereof is here presented to your Consideration by him, that is well assured, that they will make good my Cantubernions Thesis or Position, namely:

That no Princes, that are Compleat, Independent, and Imperial Sovereigns, can be accountable to their Subjects, or obnoxious to their Coercive and Vindictive Power. Not that we intend hereby, that a Supreme Potentate is free from the

the Direction of, and Obligation to the Law of God, Nature and Common Equity, but from any Humane Co-active Power, upon Imputation of Male-Administration, to Punish, Censure, or Dethrone him. And now having given you this Precaution, I shall offer you in Proof of the prementioned Position, the Judicious Sentiments of Heathens; Antient Christians, Modern Divines, Civilians, and Common Lawyers, &c. Let us then first see, how sacred the Persons, how unquestionable the Authority of Sovereign Princes over their Subjects was among the Heathens.

S E C T. I.

The Sentiments of the Heathens.

IF we look into the antient History and Policy, among the Gentiles, we shall undoubtedly find, that there was a Right vested in Kings, their Supreme Governours, of not being violently Controulable, or Accountable for their Actions; And therefore no defects in Government, could render them obnoxious to Justice, nor any Crimes, tho' never so Enormous, could deprive them of their Sovereignty, or any Rights belonging to their Royal Dignity. They were *Tuti Imperii Majestate*, Their Majesty was their Protection, and their Character, their Sanctuary.

I. *Plutarch* in his Tract touching Monarchy, Democracy, and Oligarchy, calls the first βασιλεία, Kingly Government, and says once, that it is *Αυτοκρατία*, of Absolute Authority, twice *Αναπείδυνος*, Uncontroulable.

Dion. Cass.
lib. 53.

II. *Dion. Cassius* faith of the Roman Emperours; They are set lose from the Laws, as the Latin words themselves speak: That is, they are free from all necessary Subjection to Law, or Coaction by it, and are bound by None of the written Institutes.

excerptis
ionis Cass.

III. *Marcus Aurelius* says, in *Dion. Cassius*; Of Imperial Authority, God only may be Judge.

ob. Serm.
6.

IV. *Ecphantas* a Pythagorean, hath in *Stobæus* these very words; It belongs also to a King, to Rule himself, and not to be rul'd by none.

V. O.

V. *Otanes*, a Persian Noble, in *Herodotus*, speaking of Monarchy or Kingly Government, dictates thus, *Which hath a Right of doing whatever it will, without Controul.* *Facere quod quis velit, ita ut alii non*

VI. *Æschylus* expresseth himself thus; *Rex est suo utens jure, nulli obnoxius*; Kings live by their own Laws, subject to none. *reddatur.*

VII. *Caius Memmius*, a Tribune of the Roman People, saith in *Salust* in *bell. Jugurth.* *Impune quid vis facere, id est Regem esse*; To do any thing without fear of Punishment, is peculiar to Kings.

VIII. *Dion. Prusænsis*, speaking of a Sovereign Monarch, tells us, *That he is Free and Absolute in Power both over Himself, and over the Laws*; *What he will he doth, and what he will not he doth not*; that is to say in the Latin Phrase, *Ita imperare, ut alii Ratio non reddatur.*

IX. *Cleopatra* urging her *Marcus Antonius* to call *Herod* to account for the Murder of *Aristobulus*; *Antony* answer'd openly, *That it was neither Just nor Right to call a King to an Account for what he doth as King*; for if so, he wou'd not be a King; For common Equity requires, *That they that gave him that Honour, should permit him the free use of that Sovereign Power, which was appendant unto it.* *Joseph Jud. Antiq. lib. 15. cap. 4.*

X. *Herodotus* tells us, *That Cambises* Consulting his Senate, whether he might lawfully Marry his own Sister? Was Answer'd, *That they found no such Law as gave a Brother Power to take his own Sister to Wife*; But indeed they met with one which gave their Emperor free Liberty to do what He pleased. *Herod. lib. 3.*

XI. It is Recorded, *That Tully* (the Highest of Roman Orators and Lawyers) Pleading before *Cæsar* for *Deiotarus*, King of *Galatia*, Albeit he was but a Tributary King, yet he doth Challenge that Privilege unto him, saying, *Ita inusitatum est, Regem Capitis reum esse, ut ante hoc Tempus sit inauditum.* *Cic. Orat. pro Deiotaro.* That it was so unusual a thing for a King to be Accused, that before that Time, 'twas never heard of.

Thus we most evidently see, *That Kings among Pagans*, were not to be violently Controul'd, or call'd to any Account for their Malign administrations, by their Subjects.

But this is *Heathen Doctrine*; Let us try how agreeable such Impunity of Sovereign Princes, is to the Theology, or Divinity of the Antient *Christians*.

S E C T. II.

The Sentiments of the most Antient Christians.

BY the general Consent and Suffrage of the Antient *Christians*, Sovereign Princes are loosed from the Law; that is to say, They are no way liable to any Violent Censure, or Penal Law of Man; *Tuti Imperii potestate*. Their Empire and Sovereignty exempting and privileging them therefrom. For such was the Profession of *Cassiodorus*; If any of the People commit a Fault, (saith he) he Sinneeth to God, and the King; But when the King Offendeth, he standeth Guilty to God alone, because he hath no Man who is to be Judge of his Actions.

*Cassiod. in
Psal. 50.*

*Arnob. in
Psal. 50.*

Every one that lives under Authority, (as speaks *Arnobius*) sinneeth against God, and the Laws of this World also; But the King, as living under God alone, and having no Power above his own to fear, but God's only when he sinneeth, offendeth God alone, and none other.

*Cyril. Com.
in Johan. 12.*

Cyril of Alexandria hath been pleas'd to express himself thus; Who dare Violate the Decrees of Terrene Kings, or attempt to Dissolve the Laws Enacted by Princes, unless he himself be one of those who are invested with Regal Dignity? For in such, the Charge of Transgressing the Law hath no place at all.

*Apol. David
c. 4. & lib.
2. Epist. 7.
ad Simplic.*

Farther yet; That against Injuries done by Kings, there remains no Power at all in the People, either to Resist, or Revenge. Other Fathers of the Catholick Church did rightly gather from the Words of King David, *Tibi Soli Peccavi*. Unto thee only have I sinned. Because, as *St. Hierome* upon that place glosseth, David being a King, stood in fear of none but God, as having no other Judge but him. So *St. Ambrose*: David was a King, and so Subject to no Laws; For Kings are free from those Shackles, wherewith their Subject's Crimes do intangle them: They fear no Punishments, being secur'd by the Power of the Empire.

*Euthym. in
Psal. 51.*

So likewise *Euthymius* gives this Paraphrase of the aforesaid words of King David; For as I am a King, and so have Thee only Judge of the Crimes committed by Me, against Thee only I appear to have sinned, that is, I am Subject to no other Judge but unto Thee alone, for of All the rest I am my self the Lord.

Add hereunto what has been said by *Isidorus Pelusiota*, and *Gregory Bishop of Tours*, in Defence of the Impunity, that properly belongs to Sovereign Princes.

The

The former writeth of one, that was an Heathen, *That being a King, he was not to expect any Judicial Sentence from Men; forasmuch as such were Subject to God's Judgment only.* Isidor. Pel. l. 5. Ep. 383. ad Petr. cor-rector

The later, notably bespeaks *Chilperick the French Monarch* thus; *If any Subject deal unjustly with us, it is in thy Power, O King! to punish him: But if thou oppress us, who shall judge thee? We may Complain unto thee, and if thou wilt, thou mayst hear us; But if not, who shall Condemn thee, but He only, that is Justice it self? (That is God himself alone.* Greg. Turo-nens. Hist. Fran. lib. 5. cap. 18.

Thus having shewn, how the Antients of the Christian Church have spoken, in behalf of Kings, for the referring their Miscarriages only to God's Tribunal: They being not at all accountable to any other, because upon Earth they have no Judge, nor within their Dominions any Peers, I shall now offer the Judgments of our Divines, concerning the Exemption, and Freedom of Sovereign Princes from the Coercive and Vindictive Power of their People.

S E C T. III.

The Sentiments of our own English Divines.

ACCORDING to the Learned as well in Divinity, as in Law, there is a two-fold Power in the positive Laws of Men, namely, A power Directive, and a power Coactive; in respect of the former, a Sovereign Prince is said to be under the Law, that is as much as to say, The Law is the Line and Rule, whereby the Will of a King is Guided and Directed; But in respect of the Latter, a King is not under the Law. For how can we possibly conceive (say both Divines and Lawyers) that he, who giveth Life to the Law, should offer Force to Himself, and Compel himself? Again, they say, he that is under the former power only, is accountable to God Almighty only, as a Sovereign Prince; But he that is under both Powers of the Law, is accountable both to God, and the Law; as is every Subject. Having given an Account of the two fold Power that is in the Laws of Man, I now come to tender the Thoughts of our *English* Theologists, concerning the Sacredness, and Inviolability of Royal Majesty, and Sovereignty; And the Divines that I shall expose to view, shall be *Mercks, Brownrig,* the Author of the *Whole Duty of Man, Stillingfleet, Pelling, and Evats.*

I. Dr. MERCKS.

T *Thomas Mercks*, Bishop of *Carlisle*, upon a Motion made in Parliament, what should be done with the Desposed King *Rich.* the Second, having never allow'd the Proceedings against him, but dissembled his Dislike, till fit time to declare it; made so Excellent an Oration or Speech to the Lords against such Deposing, that nothing besides the Length, could tempt me to omit the transcribing the Whole; And therefore I shall here offer but a Parcel of it.

Trussel's
Hist. in vit.
H. 4. p. 51,
52, &c. and
Hayw. H. 4.
Par. 1.

‘ If the Sovereign Majesty (saith the Bishop) be in the Prince, as it was in the first three Emperours, and in the Kingdoms of *Judæa* and *Israel*, and is now in the Kingdoms of *England*, *France*, *Scotland*, *Spain*, *Muscovy*, *Turkie*, *Tartary*, *Persia*, *Ethiopia*, and almost all the Kingdoms of *Asia*, and *Africa*; altho’ for his Vices, he be unprofitable to the Subjects, yea hurtful, yea intolerable; yet can they neither hazard his Power, nor harm his Person, either by Judicial Proceedings, or by Force; for neither one, nor all Magistrates have any Authority over the Prince, from whom all Authority is deriv’d, and whose only Presence doth Silence, and Suspend all Inferior Jurisdiction and Force. And for Power, what Subject can Assist, or Counsel, or Conceal Violence against his Prince, and not incur the High and Heinous Crime of Fensory, or Treason: It is a common saying, *Thought is free*; free indeed from punishment of Secular Laws, except by Word or Deed, it break forth into Action; yet the secret Thoughts against Sacred Majesty of a Prince, without Attempt, without Endeavour, have been Adjudged to Death; And some, who in Auricular Confession have discover’d their Treacherous Devices against the King in person, have for the same been Executed. All Laws do Exempt Madmen from Punishment, because their Actions are not govern’d by their Will, and the Will of Man being set apart, all his Deeds are Indifferent; neither can the Body offend, without a Corrupt and Erroneous Mind; yet if a Madman but draw his Weapon upon the King, it hath been Adjudged worthy of Death.

2. Dr. BROWNRIG.

R *Alph Brownrig*, Bishop of *Exeter*, in a Sermon on *Dan. 6. 2.* *Brownrig*
 21, 22. Preach'd on the *Gun-Powder Treason Day*, expresseth *vol. 1. of Ser-*
 himself thus in the Defence of Kings : *mons, p. 51,*
52.

No Wrong or Injury, can exempt or discharge our Persons from our Lawful Sovereign. 'The *Hebrews*, havock'd by *Pharaoh*, Rebell'd not. *David* pursu'd by *Saul*, oppos'd not, Conspir'd not against him. *Jeremy* persecuted by *Zedechias*, Revolts not. Yea; this is Thanks-worthy with God, if we be wrong'd, not to Mutiny, and Repine, not to Revile, or Oppose; but to Suffer as Christians, in Meekness and Patience: Private Wrongs may have Redresses; but Magistrates, Arm'd with Authority, if they prove Heavy and Injurious, they must be Proofs of our Patience, no Provocation of our Revenge; And,

The same Learned Bishop in another Sermon upon this Text, *Brownrig*
 namely, 2 *Sam. 6. 12.* Preach'd on the Inauguration of King *Charles* *vol. 1. of Ser-*
 the First, tells us, 'That Kings must be sought with Submissive *mons p. 22.*
 'Entreaties, not encounter'd with bold, and audacious *Expostula-*
 'tions; not upbraided with their Oaths and Promises: much less
 'Threaten'd and Menac'd, if they will not perform them. As the
 'Secular Priests did threaten King *James*, if he would not give way
 'to their Superstition, who knows what the forcible Weapon of Ne-
 'cessity may drive them to? Or, as *Belarmine* wrote to him, *Si*
 '*Rex Angliæ vitæ suæ Consulere cupiat, sinat Catholicos frui Religione*
 '*sua*, or else he shall hear of them. *O! non est Religionis, cogere Re-*
 '*ligionem*, saith *Tertullian*. Religion makes no forcible Entry; E-
 'specially, not in Kings and Princes; breaks not in with Threat-
 'nings upon them. Nay, irreverent Reproofs are Violations of
 'Majesty. 'Tis as the *Sin of Uzzah* (saith *St. Hierome*) that would
 'stay up the *Ark*, by an Irreverent Touch of it.

3. The Author of the Whole Duty of Man.

THis Person treating of the Duty owing to Magistrates, writes in this wise:

'What is on the other side, the Duty of the Magistrate to the
 'Peo-

Part 14.

Sect. 5. In

fines

People will be vain to mention here, none of that Rank being like to read this Treatise, and it being very useles for the People to inquire, what is the Duty of their Supreme, wherein the most are already much better Read than in their own; it may suffice them to know, that whatsoever his Duty is, or however perform'd, *He is Accountable to none but God, and no Failing of his Part can warrant them to fail of theirs.*

4. Dr. Stillingfleet.

Sermon
preach'd on
30th of Jan.
1665.

THis Doctor (Famous for his Knowledge in all manner of Learning, once Dean of St. Paul's, and after Bishop of Worcester) in a Sermon of his on *Jude v. 11. p. 28.* Speaking of the Unaccountable Power vested in Sovereign Princes, makes this following Harangue on it:

What mighty Danger can there be in supposing the Persons of Princes to be so Sacred, that no Sons of Violence ought to come near them? Have not all the antient Kingdoms, and Empires of the World flourish'd under the Supposition of an Unaccountable Power in Princes? That hath been thought by those, who did not own a Derivation of their Power from God, but a just Security to their Persons, (considering the Hazards and the Care of Government which they undergo? Have not the People, who have been most jealous of their Liberties, been fain to have Recourse to an Unaccountable Power, as their last Refuge in Case of their greatest Necessities? I mean the *Romans* in their *Dictators*. And if it were thought not only Reasonable but Necessary then, ought it not to be preserv'd Inviolable, where the same Laws do give it, by which Men have any Right to Challenge any Power at all? Neither doth this give *Princes the Liberty to do what they list*; For the Laws, by which they Govern, do fence in the Rights and Properties of Men; And Princes do find so great Conveniency, Ease, and Security in their Government by Law, that the Sense of that will keep them better within the Compass of Laws, than the Peoples holding a Rod over them, which the best Princes are like to suffer the most by, and will grow Desperate by it. Good Princes will never need such a Curb, because their *Oaths*, and *Promises*, their *Love*, and *Tenderness* towards their *People*,

‘ple, the Sense they have of a Power Infinitely Greater than theirs, to which they must give an Account of all their Actions, will make them Govern as the Fathers of their Country; And Bad Princes will never Value it, but will endeavour by all possible Means to Secure themselves against it. So that no Inconveniency can be possibly so great on the Supposition of this unaccountable Power of Sovereign Princes, taking it in the General, and meerly on the account of Reason, as the unavoidable Mischiefs of that Hypothesis, which places all Originally in the People, and notwithstanding all Oaths and Bonds whatsoever to Obedience, gives them the Liberty to resume it, when they please, which will always be, when that Spirit of Faction and Sedition shall prevail among them, which Ruled here in *Corah* and his Company.

5. Mr. PELLING.

MR. Pelling, Rector of *St. Martins Ludgate*, in a Sermon of his, on *Prov. 8. 15. pag. 11 and 12.* Discourſing of the Original of Regality, of the Prerogatives, and the unaccountableneſs of Sovereign Princes, uttereth theſe very Words that here follow:

‘It is God’s Sword wherewith the Magiſtrate Strikes; and by him he is Ordain’d to be an Avenger: By whomſoever he is Chosen, by God alone he Reigneth; His Crown and Sceptre, his Prerogatives and Royalties he holdeth of Him, and of none beſides. Take the World diſtributively, collectively, either Man by Man, or by whole Communities, the King owns no Superior, or Enfranchiſer here below; All the fear is, That by this Grant, a Monarch’s Power will be unlimited: An idle Dream, which Demagogues have held out as a Flambeau, to ſet the World on Fire: For tho’ he be not under the fear of Law, being exempt from all manner of Penalty, yet it is confeſs’d by the Divines and Lawyers, That the directive Power of Laws doth oblige him. Who knoweth not, that God hath bound him to the Reſpects of publick Honesty, tho’ he has not made him liable to a publick Rod? Who knoweth not, That the Laws of Nature and Religion do oblige him as he is a Man, and much more as he is a Prince? Who knows not, That he is under Municipal Laws of his Kingdom, ſuch as is the *Petition of Right* here with us? To theſe he has

A Sermon preach’d on 30th of Jan. 1678.

‘ has Bound himself by his own Consent: And who knows not,
 ‘ That a *Promise*, or an *Oath*, Obligeth him too? And that some-
 ‘ times he is more careful to keep it than his very Subjects are?
 ‘ But yet if a Prince will Abuse his Power, and the Law too, he
 ‘ is not subject to any manner of Compulsion, being Accounta-
 ‘ ble only to God, who alone hath Sealed his Commission.

6. Mr. EVATS.

William Evats, Batchelor of Divinity, and Translator of
Grotius (Of the Rights of War and Peace) into *English*,
 gives us this Notable Remark concerning Kings, to be found in
 the Margent of *Lib. 1. Cap. 3. Sect. 8.*

‘ That Kings are Inferior to God alone, is no less *Christian*, than
 ‘ *Ethnick Philosophy*. For in this, and in nothing more, are Kings
 ‘ like God, That they depend upon none: He whom God hath
 ‘ placed in his Throne, is accountable to none but unto Him who
 ‘ placed him there. He is *Solutus Legibus*, above the Lash of Hu-
 ‘ man Laws. He Judgeth All, but is Judg’d of None: When
 ‘ *Herod* was Accus’d to *Mark Anthony* for the Murther of *Aristobu-*
 ‘ *lus*, *Anthony* makes this Apology for him; *It was neither Just, nor*
 ‘ *Equitable, to require an Account from Kings, for what they do as*
 ‘ *Kings; for if that were permitted, they could be no longer Kings.* King-
 ‘ ly Power then must needs be highest, because there lies no Appeal
 ‘ from him, or against him, but unto God. And as it is subject
 ‘ to no other Power, so it is bounded by no *Human Law*, as other
 ‘ Powers. It is granted, That *Moses* indeed seems to prescribe
 ‘ Laws unto Kings, and tells what they should do. And Good
 ‘ Princes will say, with the Emperor *Theodosius*, *Tantum mihi licet,*
 ‘ *quantum per Legem licet: That only is lawful for me to do, which the*
 ‘ *Laws account so.* But as *Moses* Teacheth us what a King should
 ‘ do, so *Samuel* tells us what a King may do: *Moses* tells us his
 ‘ Duty, *Samuel* his Power. The Law consists of two distinct Parts,
 ‘ the one Direct, the other Co-ercive; The former points at the
 ‘ Rationability of the Law, the latter the Danger we run into if we
 ‘ break the Law. Now Laws serve to direct Kings, because they
 ‘ mind them of their Duty; But they have no power to Force
 ‘ them to that Duty, much less to Un-king them if they do it
 ‘ not.

We have seen that by the Judgment of our *English* Divines, Sovereign Princes are only accountable to God for their Casual or Willfull Errors, and Mistakes, and no way liable to the Punishment of their Subjects: Let's now proceed in searching out the Thoughts of the Imperial or Civil Lawyers, touching Princes their Freedom from the Co-ercive Power of Man.

SECT. IV.

The Sentiments of the Civilians.

THE Imperial Jurists do all Pronounce, That Sovereign princes are exempted from Subjection to any positive and temporal Laws; that they are above the Reach of those Constitutions, or Edicts, which they themselves have made; (above the Censure and Penalties of them, not their Guidance, and Direction;) And since (say they) Supreme Governours can dispense with their own Subjects for breach of them, then much more surely with themselves, who are the Authors of them; Besides, no man is properly constrain'd by himself, and the Law has no force Coactive, but from the power of the Prince; Thus therefore he must be loosed from the Law, Because no man can give Sentence of Condemnation against him, if he do any thing against the Law.

1. The Lawyer *Ulpian* doth say, *Quod Princeps Legibus solutus est*, That the Prince is loosed from the Law. But from what Laws? Why from all Penal Laws, such as the Law *Julian*, and *Papian*; of which kind of Laws, as *Gothofridus*, on the Text, *Cujacius* and *Conanus*, say, *Ulpian* doth speak. Dan. 1. 3. 31.
Cujac. l. 15.
Obs. 30. &
l. 26. Obser.

35. *Conan. lib. Comment. Jur. cap. 16.*

2. *Constantinus Harmenopulus*, the Greek Abridger of the Civil Law asserts, That the King is not to be Subject to the Laws, because offending against them he is not punished. Harmenop.
Epitom. Jur.
l. 1. Tit. 1.
Sect. 48.

3. Such Laws as are positive, and Temporal, no doubt say the Roman Legislators) *Justinian* the Emperour meant, when upon enacting of a Constitution of this kind, he addeth thereunto this Limitation; *Omnibus a nobis dictis, Imperatoris excipiat fortuna, cui & ipsas Deus leges subjecit, legem animatam eum mittens hominibus*; From all those things that have been said by us, let the Emperour's State be excepted. Justin. nov.
105. c. 2. in
fin.

cepted, whereunto God hath Subjected the very Laws themselves, sending him as a living Law unto Men. Who therefore in another place assumeth unto himself the Title of, *A Father of the Law*; whereupon the Glossator maketh this Observation, *Nota Imperatorem vocari Patrem Legis*; unde & *Leges sunt ei Subjectæ*, Note, That the Emperor is the Father of the Law; whereupon the Laws also are Subject to Him.

Grot. lib. 2. c. 14. Sect. 2. 4. Hugo Grotius (the Ornament of his Age and Nation, for Learning and Wisdom) in his Tract of the *Rights of War and Peace*, Speaking of, *To what Acts of Kings, the Laws extend*, has this Proviso, 'That where the Laws do make void any private Man's Act, not in Favour of the person acting, but as his Punishment; those Laws are of no force against the Acts of Kings; nor indeed, any other Penal Laws, nor any thing else, that implies *Vim Coeundi*, a Power Coercive. For to punish, and to Compel, cannot proceed but from different and distinct Wills, and so from distinct Persons; neither can the Compeller, and the Compell'd, be any one Person, tho' under divers Respects.

Ducke de 5; Dr. Ducke doth assert, *Principem teneri ad Jura Naturæ, & Auctoritat. Gentium; ideo ad Contractum tenetur, ut privatus, nec potest Contrajur. Civil. sum suum rescindere, ex plenitudine potestatis, cum maxime requiratur Rom. lib. 1. in eo bona fides, & quales sunt Emptio, Venditio, mutuum locatio, & a. 3. sect. 12. hii Commutativi contractus, & quos omnis princeps tenetur, iisque nullo modo solutus est. Et Leges etiam Civiles servare tenetur princeps, licet non Vi Coactiva, cum nemo possit principes cogere ad Legum observationem, vi tamen directiva, ex Jure, & Equitate naturali.* With our Dr. do concur Zieglerus de *Juribus Majestatis*, l. 1. c. 1. n. 26, 27, 28, and 29. And Job Wormserus, exercit. 3. Qu. 1. p. 97.

Wiseman's 6. Sir Robert Wiseman, a Learned Doctor of the Civil Law expresseth himself thus touching these Matters; Tract, Entit. 'Where the Civil Law hath declared, that a Prince is exempt The Law of 'from Laws, the meaning is not, that he may violate, and trample upon them as himself listeth, as oft as they stand in his way, Laws, sect. 'for that is Contradicted expressly by divers Texts of the Civil Law 1. c. p. 38. '[as Cod. 1. 14. 4. It is the Language worthy of a Prince, to acknowledge himself bound to Laws, And D. 32. 1. 23. de leg. 3. It is most befitting his Highness for to keep those Laws, whereof he may seem to be free] But that he is not punishable, when he breaks them, because he has no humane Superior to judge, or question him, or to exact Obedience from him. edit 1686.

I shall conclude the *Section* with this Observation, That there is a necessity to grant Impunity to some in all Governments, to avoid Confusion; for a Circle in Government would be infinitely absurd, and of pernicious Consequences, when Rulers are placed over a People, to challenge a Right to Rule those Rulers. But such a People run round till they are giddy, all the foundations of Government being mov'd by them, and put out of Course; Because they have not settled a Supreme Power, to whose Sentence the last Resort or Appeal must be. And this was well understood by the Antient *Romans*, to be most necessary in a Monarchy; for tho' they were a People most greedy of Liberty, yet the Senate gave the Emperor *Augustus* a general Exemption from the Coactive Power of the Law, and this Decree was made while *Augustus* was yet absent, which Decree of the Senate of *Rome* was Confirm'd afterwards to the succeeding Emperours, to free them from all Coaction of the positive Law of Man.

S E C T. V.

The Sentiments of our Common Lawyers, and others.

THE Realm of *England* being a perfect Sovereignty, or Empire, and the Princes thereof (whom we call the Monarchs of *England*, Kings, or Queens) Compleat, and Imperial Sovereigns, Subject to none but God Almighty, by whom they Reign; It must needs follow, That they have the Essential Rights (among others) of perfect Sovereignty belonging unto them. *As to be Unaccountable to any Human Power. And, To be free from all Coercive and Vindicative Authority here upon Earth.*

Our Lawyers, both Antient and Modern, are Clear for this Truth, Namely, That Our Monarchs receiving their Authority only from God, have no Superior to Chastise and Punish them, but God alone. As shall be Evidenced by these Vouchers following.

1. *Voucher.*

Lib. 1. c. 8.
5.

Henry de Bracton, a Famous Lawyer, and Chief Justice under King Henry the Third, in his Customs of England, saith; *Omnes quidem sub Rege, & ipse sub nullo, nisi tantum sub Deo, parem autem non habet in Regno suo, quia sic amitteret præceptum, cum par in parem non habeat Imperium. Item nec multo fortius Superiorem, nec Potentiorum habere debet, quia sic esset Inferior sibi Subjectis, & Inferiores pares esse non possunt Potentioribus. Ipse autem Rex, non debet esse sub Homine, sed sub Deo.*

Lib. 5. Tract.
de defaltis.
3. n. 3.

All are under the King, and the King is under God only. He hath no Equal in his Realm, because then he could not Command all, for amongst Equals there can be no Empire. Therefore much less are any his Superiours, or can Challenge greater Power, because then he would be under his Subjects, &c. The King ought not to be under Man, but under God; And then delivers this Truth plainly, *We have no Legal Remedy, We can only humbly Petition His Sacred Majesty, Locus erit Supplicationi, quod factum sum corrigat, & emendet, quod quidem si non fecerit, satis sufficit ei ad pœnam quod Dominum expectet ultorem. Nemo quidem de factis suis præsumat disputare, multo fortius contra factum suum venire; If he will not hearken to our just, and reasonable Desires, his Punishment is more than enough, for he must render an Account to him that judgeth righteously: Let no men presume to question his Deeds: much less to undo by Force, what he shall do, tho' not according to Right, That no body may think this dropt from him unwarily, he repeats it in another place. He puts the Case, That the King should do no Injury, and a Plea is brought against him, in whose behalf he did it; The King being petition'd, and persisting: And he rules it thus. *Quo casu cum Dominus Rex super hoc fuerit intepellatus, in eadem persistit voluntate quod velit tenentem esse defensum cum Injuria, cum teneatur Justitiam totis viribus defensare, ex tunc erit Injuria ipsius Domini Regis, nec poterit ei necessitatem aliquis imponere, quod illam corrigat, & emendet, nisi velit, cum Superiorem non habeat nisi Deum, satis erit illi pro pœna, quod Deum expectet ultorem.* If the King, who is bound to administer Justice to his utmost power, will not recall the Wrong he did upon a false Suggestion in this Case, he injures his Subjects, but no Body can force him to do Right, because he hath Supreme Power; He hath no Superior but God only, and it is sufficient that*

‘that we shall have a Day of Hearing hereafter at a Just Tribunal, where he shall be punished for doing Wrong, and we amply requited for our patient Suffering.

2. Voucher.

THE Authour of the Tract, intituled *Fleta*, treadeth in the same Steps with *Bracton*, in asserting, That if the King should chance to swerve from the Rules of Law, he is not liable to any Punishment, nor compellable by Force.

Cum provisum sit (says he) *quod quilibet in suis Juris prosecutione* Lib. 1. c. 1.
potius judicium, quam viribus utatur, & oportet laicos Regem adire, ut n. 9.
ostensis sibi injuriis illatis, celerem Justitiam potentibus faciat exhiberi,
qui si noluerit de seipso, vel de alio, ex tunc Deum expectent conquere-
rentes ultorem: Nemo enim de facto Regis presumat disputare, contra
factum suum venire.

3. Voucher.

STamford in his Exposition of the King's Prerogative, in de-Stamf. su-
fence of the Impunity that belongs to the King of Eng- Prerog.
land, expresseth himself in these very Words; c. 15.

‘By the Common-Law, there lieth no Action or Writ against 42. d. 72
‘the King, but when he seiseth his Subjects Lands, or Goods, ha- Tit. Peti-
‘ving no Title by Order of his Laws so to do, Petition is all Edit. 15
‘the Remedy the Subject hath, and this Petition is called, A
‘Petition of Right.

4. Voucher.

SIR Orlando Bridgeman deliver'd to the Grand Jury upon the
Arraignment of the Regicides, for plain true Law, ‘That
‘no Authority, no single Person, or Community of Persons, nor
‘the people Collectively or Representatively have any Coercive
‘Power over the King of England.

5. *Voucher.*

ib. 2. c. 3. **M**R. Roger Coke [in his Treatise, Intituled, *Elements of Power*
act. 5. pag. *and Subjection*] to prove that a Sovereign Prince doth all
5. things without punishment, makes use of this Argument: 'In
' punishment, Equals cannot Judge Equals, much less can In-
' feriours Judge Superiours: But a Supreme Prince cannot have
' an Equal, much less a Superiour; therefore a Supreme Prince
' cannot be punish'd. If a Supreme Prince might be punish'd
' for any thing he doth, then cannot he do any thing but he
' will be liable to Punishment for so doing: For what Property
' can he give to one which will not offend some other? Nor
' did the veriest Thief, or Murtherer ever suffer punishment,
' but some of his Comrades would seek Revenge, and if they
' might, would punish the Law-giver. Besides, who shall Judge
' his Prince? If any one, then every one may.

6. *Voucher.*

Lord- **T**HE late Earl of Clarendon in his Survey of Hobbs's *Levia-*
thian, writes thus;
s Survey. ' If all Sovereigns are subject to the Laws of Nature (as he
be Chap- ' says they are) because such Laws are Divine, and cannot by
29. pag. ' any Man, or Commonwealth be abrogated, they then were
3. ' obliged to observe and perform those Laws, which themselves
' have made and promised to observe, for Violation of Faith is
' against the Law of Nature by his own Confession; nor doth
' this Obligation set any Judge over the Sovereign, nor doth any
' Civil Law pretend that there is any Power to punish him; it
' is enough, that in Justice he ought to do it, and that there is
' a Sovereign in Heaven above him, though not on Earth.

7. *Voucher.*

IN the Reign of King *Edward* the Second, the *Spencers*, (*Fa. Co. Lib. 7.*
ther and Son) to cover their Treason, invented this Damna-
 ble Opinion, That *Homage, and the Oath of Legeance* was due to Calvin's
 the King, more upon the Account of his Politick Capacity than his
 Natural Person; upon which Opinion they inferred these Execra-
 ble and Detestable Consequents.

1. That if the King did not demean himself by Reason in the Right of his Crown, his Lieges were bound by Oath to Remove Him.
2. That when the King could not be Reform'd by Suit of Law, That it ought to be done by Force.
3. That his Subjects be bound to Govern in Aid of him, and in Default of him. All which were Condemn'd by two Parliaments, one in the Reign of *E. 2.* called *Exilium Hugonis Le Spencer*, and the other in *Anno 1 E. 3.*

8. *Voucher.*

THE Statutes of *16 R. 2. c. 5. 25. H. 8. c. 21. 1 Eliz. c. 1. 1 Jac. c. 1. 12. Car. 2. c. 12.* do declare, That the Crown of *England* is immediately Subject to God, and to no other Power; That *England* is an Empire, the Crown thereof Imperial. And what is an Imperial Crown? It is that, which, as to the Coercive part is Subject to no Man under God, and free from all Co-action of Positive, or Temporal Constitutions.

9. *Voucher.*

9. *Voucher.*

The Act of Attainder of the Regicides. **B**Y the Statute of 12 Car. 2. c. 30. It is declar'd, ' That by the undoubted, and fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the People Collectively, or Representatively, nor any other Persons whatsoever had, have, hath, or ought to have any Coercive Power over the Kings of this Realm.

10. *Voucher.*

His History of the World. **I** shall Conclude this my last Section with the famous Sir *Walter Rawleigh*, who gives this Solution of the Question: *Part 1. Lib. 2. c. 4. Sect. 16.* *Whether Sovereign Princes are Compellable?* That there are two powers of the Law; the one *Directive*, and the other *Coactive*: to the power *Directive* they ought to be subject, but not to that which constraineth; for, as touching Violence, or Punishments, no Man is bound to give a prejudicial Judgment against himself, and if Equals have not Power over each other, much less have Inferiours over their Superiours, from whom they receiv'd their Authority and Strength, and closes all with saying, That, according to the Rules of the Law, Subjects are bound to fulfill the Law by necessity of Compulsion, but the Prince only by his own Will, and in regard of the Common Good.

Thus have I (Sir) by the assistance of my Chamber-Fellow, made good (and that I presume sufficiently) the position tender'd you in the beginning of this long and tedious Epistle, namely, ' That no Princes that are Compleat, Independent, and Imperial Sovereigns can be accountable to their Subjects, or obnoxious to their Coercive and Vindictive Power; and so I now take my Leave of you, as well by giving you one Remark, which is, ' That it were very absurd and unreasonable for such as have

' have Sovereign Power to be Fenced with so many, and so
 ' severe Laws, and the Licentiousness of Subjects to be restrain-
 ' ed with such sharp and exquisite Torments, if it were Law-
 ' ful for Subjects to punish Princes for their Errors and Mi-
 ' stakes in Government; as also by acknowledging my self
 ' to be

Your Most Affectionate Friend,

And very Humble Servant.

POSTSCRIPT.

23 JUL 69

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P O S T S C R I P T

*Consisting of some of the Words of the Royal Martyr,
to be found in his Reasons against the Pretended Ju-
risdiction of the High Court of Injustice, &c.*

“ **T** Here is no Proceeding Just against any Man, but
 “ what is Warranted either by God’s Laws, or the
 “ Municipal Laws of the Country where he lies. Now
 “ I am most Confident, that this Day’s Proceeding
 “ cannot be Warranted by God’s Law; for, on the contrary,
 “ the Authority of Obedience unto Kings is clearly Warranted,
 “ and strictly Commanded both in the Old, and New Testa-
 “ ment; which, if denied, I am ready Instantly to Prove;
 “ and for the Question now in hand, there it is said, That
 “ *where the Word of a King is, there is Power, and who may say un-
 “ to him, What doest Thou? Ecclef. 8. 3.* Then for the Laws of
 “ this Land, I am no less confident, that no Learned Lawyer
 “ will affirm, that an Impeachment can lie against the King,
 “ they all going in his Name; and one of their Maxims is,
 “ *That the King can do no Wrong.*

F I N I S.